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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/797,277  | 03/11/2004  | Paul Andrew Vogt     |                     | 2932             |
| 7590  | 10/21/2004  |                      | EXAMINER            |                  |
| PAUL ANDREW VOGT<br>1058 OTTAWA AVE.<br>W. ST. PAUL, MN 55118 |             |                      | NGUYEN, SON T       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3643                |                  |

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

|                           |                   |
|---------------------------|-------------------|
| Application No.           | VOGT, PAUL ANDREW |
| 10/797,277                |                   |
| Examiner<br>Son T. Nguyen | Art Unit<br>3643  |

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 11 March 2004.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-12 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on 11 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.                    4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the at least one support pillar projecting downwardly from the plate must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1,3,4,8,9** are rejected under 35 U.S.C. 102(b) as being anticipated by JP 205893 (herein 893).

For claim 1, 893 discloses a plant basket insert divider comprising a plate portion 2 including a water inlet shroud (the "hump" in the middle) having a successively increasing surface projection/water inlet recess; holes 3 for securing (or capable of securing due to similar structure as claimed by Applicant) an absorbent material; a slot 6 forming an inwardly open recess adjacent to the shroud which acts or capable of

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acting (since it has same structure as claimed by Applicant, thus, should be able to perform the same function) to align the shroud over a water portal in a plant basket.

For claim 3, 893 discloses the shroud includes an inwardly extending recess (the hump).

For claim 4, 893 discloses the shroud is beveled upwardly from the plate portion as shown in fig. 6.

For claims 8 & 9, see the above claims 1,3,4.

4. **Claims 8,10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2127264 (herein 264).**

For claim 8, 264 teaches an insert divider comprising a body member having a plate portion 12 and water inlet shroud portion 46,48, whereas one end of the shroud portion arcuately projects from the body member to form an inwardly descending water inlet recess (see fig. 4), and the plate portion includes holes 38,40 for securing absorbent material.

For claim 10, 264 teaches wherein the plate portion includes at least one support pillar 50 projecting downwardly.

For claim 11, 264 teaches wherein the holes of the plate portion have a barbed projection (page 1, lines 115-120).

For claim 12, 264 teaches an insert divider comprising a body member having a solid plate 12, the plate includes one or more holes 38,40, each having one or more inwardly barbed projections (page 1, lines 115-120).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 2,5-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over 893 (as above) in view of GB 2127264 (herein 264).

For claim 2, 264 teaches a plant insert comprising a plat portion including at least one barbed projection for capturing an absorbent material (page 1, lines 115-120). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ barbed projection as taught by 264 in the insert divider of 893 in order to further secure the absorbent material.

For claim 5, 893 teaches the insert divider as described above and 264 teaches the barbed projections as described above.

For claim 6, 893 as modified by 264 (emphasis on 893) discloses the plate portion and the shroud are solid in nature.

For claim 7, 893 as modified by 264 (emphasis on 893) discloses the plate portion includes at least one hole 3 and 264 teaches the projection as described above.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the

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examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
October 18, 2004